

§ 452.98 Outside agencies.

There is nothing in the Act to prevent a union from employing an independent organization as its agent to handle the printing, mailing, and counting of ballots in such elections if all the standards of the Act are met.

§ 452.99 Notice of election.

Elections required by title IV to be held by secret ballot must be preceded by a notice of election mailed to each member at his last known home address not less than fifteen days prior to the election.⁴⁸ For purposes of computing the fifteen day period, the day on which the notices are mailed is not counted whereas the day of the election is counted. For example, if the election is to be held on the 20th day of the month, the notices must be mailed no later than the 5th day. The notice must include a specification of the date, time and place of the election and of the offices to be filled, and it must be in such form as to be reasonably calculated to inform the members of the impending election. Specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. A statement in the union by-laws that an election will be held at a certain time does not constitute the notice required by the statute. Since the Act specifies that the notice must be mailed, other means of transmission such as posting on a bulletin board or hand delivery will not satisfy the requirement. A notice of election must be sent to every member as defined in section 3(o) of the Act, not only to members who are eligible to vote in the election. Where the notice, if mailed to the last known permanent or legal residence of the member, would not be likely to reach him because of a known extended absence from that place, the statutory phrase "last known home address" may reasonably be interpreted to refer to the last known temporary address of definite duration. A single notice for both nominations and election may be used

if it meets the requirements of both such notices.⁴⁹

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

§ 452.100 Use of union newspaper as notice.

A labor organization may comply with the election notice requirement by publishing the notice in the organization's newspaper which is mailed to the last known home address of each member not less than fifteen days prior to the election. Where this procedure is used (a) the notice should be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member; (b) the notice should clearly identify the particular labor organization holding the election; (c) the notice should specify the time and place of the election and the offices to be filled; and (d) a reasonable effort must be made to keep the mailing list of the publication current.

§ 452.101 Sample ballots as notice.

Sample ballots together with information as to the time and place of the election and the offices to be filled, if mailed fifteen days prior to the election, will fulfill the election notice requirements.

§ 452.102 Notice in mail ballot election.

If the election is conducted by mail and no separate notice is mailed to the members, the ballots must be mailed to the members no later than fifteen days prior to the date when they must be mailed back in order to be counted.

§ 452.103 Primary elections.

The fifteen-day election notice provision applies to a "primary election" at which nominees are chosen. Likewise, the fifteen-day election notice requirement applies to any runoff election

⁴⁸ Act, sec. 401(e).

⁴⁹ See § 452.56 for a discussion of the requirements for notices of nomination.

which may be held after an inconclusive election. However, a separate notice would not be necessary if the election notice for the first election advises the members of the possibility of a runoff election and specifies such details as the time and place of such runoff election as may be necessary.

§ 452.104 Proximity of notice to election.

(a) The statutory requirement for giving fifteen days' notice of election is a minimum standard. There is no objection to giving more notice than is required by law. However, it was clearly the intent of Congress to have members notified at a time which reasonably precedes the date of the election. For example, notice in a union publication which is expected to cover elections to be held six months later would not be considered reasonable.

(b) Should a union change the date of an election from the date originally announced in the mail notice to the members, it must mail a second notice, containing the corrected date, at least fifteen days before the election.

§ 452.105 Interference or reprisal.

Title IV expressly provides for the right of a member to vote for and otherwise support the candidates of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any officer or member thereof.⁵⁰

§ 452.106 Preservation of records.

In every secret ballot election which is subject to the Act, the ballots and all other records pertaining to the election must be preserved for one year.⁵¹ The responsibility for preserving the records is that of the election officials

designated in the constitution and bylaws of the labor organization or, if none is so designated, its secretary. Since the Act specifies that ballots must be retained, all ballots, marked or unmarked, must be preserved. Independent certification as to the number and kind of ballots destroyed may not be substituted for preservation. In addition, ballots which have been voided, for example, because they were received late or because they were cast for an ineligible candidate, must also be preserved.

§ 452.107 Observers.

(a) Under the provisions of section 401(c), each candidate must be permitted to have an observer (1) at the polls and (2) at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. If there is more than one polling place, the candidate may have an observer at each location. If ballots are being counted at more than one location or at more than one table at a single location, a candidate is entitled to as many observers as necessary to observe the actual counting of ballots. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the election. The observers should be placed so that they do not compromise, or give the appearance of compromising, the secrecy of the ballot. The observer is not required to be a member of the labor organization unless the union's constitution and bylaws require him to be a member. There is no prohibition on the use of alternate observers, when necessary, or on a candidate serving as his own observer. Observers do not have the right to count the ballots.

(b) The right to have an observer at the polls and at the counting of the ballots extends to all candidates for office in an election subject to title IV, i.e., this includes elections in intermediate bodies as well as elections in locals and national and international labor organizations.

(c) In any secret ballot election which is conducted by mail, regardless

⁵⁰ Act, section 401(e). In *Wirtz v. Local 1752, ILA*, 56 LRRM 2303, 49 L.C. ¶18,998 (S.D. Miss. 1963), the court, under its equitable jurisdiction, granted a preliminary injunction on the motion of the Secretary to enjoin a union from taking disciplinary action against a member. The member had filed a complaint with the Secretary under section 402(a) that resulted in the Secretary filing suit under 402(b).

⁵¹ Act, section 401(e).